

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3035 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

INDIAN RAYON CORPORATON LTD

Versus

GOVERNMENT OF GUJARAT

Appearance:

MR ANSHUMAN MAHAPATRA, Advocate for
MR SI NANAVATI for Petitioners
MS MANISHA LAVKUMAR, Advocate for
M/S MG DOSHIT & CO for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 16/03/2000

The petitioners have challenged the circular dated 5.11.1981 at Annexure "K" to the petition, issued by the respondent Government in so far as it gives a clarification that there should be no industry having the indicated investment or employment, which had gone into commercial production before 1.6.1980, within the radius of 8 K.M. as was contemplated in the scheme of special incentive for pioneer units, which was announced earlier under the Government Resolution dated 27th August, 1980 at Annexure "A" to the petition. The petitioners have sought for a declaration that they were entitled to the incentive benefit of sales-tax exemption on the footing that their fixed assets were worth Rs. 4.41 crores and that the eligibility certificate should be issued on that basis raising the exemption to the maximum of Rs. 80 lakhs permissible under the resolution.

2. It was contended on behalf of the petitioners that the total investment figure reflected in the eligibility certificate which is at Annexure "L" to the petition issued in May, 1982 was not correctly considered. According to the learned Counsel for the petitioners, the fixed assets of the petitioner company were more than Rs. 4 crores. It was then argued that under the scheme as it was announced under the resolution dated 27th August, 1980, the special incentive for pioneer units was permissible when their units were located in the particular region and not more than two units having fixed assets as indicated in paragraph 7 of the resolution and giving employment to the workers as stated therein, existed in that region. In other words, the former condition was that there should not be more than two such units already existing while by the clarification the additional condition was imposed that if there was any such unit existing prior to 1.6.1980 within the radius of 8 K.M., then the new industry was not eligible for the special incentive. It was finally contended that on the doctrine of promissory estoppel, no such change could have been made, which resulted into change of status of the petitioners for claiming special incentive as a pioneering unit.

3. It is brought on record in the affidavit in reply filed by the Joint Commissioner of Industries that in the particular area, there already existed more than two units. Under the policy announced in the main resolution at Annexure "A", item-III of paragraph 7, the eligibility criteria was provided as under:-

"III. Such units should be 1st, 2nd and 3rd in such location i.e. at the particular location (i.e. town or village) and area 8 kms around it, not more than two units having fixed assets of Rs. 50 lakhs or more or giving an employment to 100 or more workers on a permanent basis should be existing."

It is stated that there already existed in the area in question six units, which are mentioned in the affidavit. This was the reason why the petitioner company was held to be not entitled to the special incentive. The petitioner company was communicated that it was not so entitled, by the impugned order dated 31.3.1982, a copy of which is at Annexure "J" to the petition. The petitioner was informed that its unit was not eligible to be accorded pioneer status according to the rules prescribed by the Government. However, the petitioners' case was being processed for the normal sales-tax incentive available. We have no reason to disbelieve the averment which is made by the Joint Commissioner on oath that there already existed in the area in question more than two units. It is therefore, obvious that the petitioner was not eligible to get the status of pioneering unit. There is therefore, no question of invoking the principle of promissory estoppel in this case.

4. As regards the value of the fixed assets for the purpose of working out the incentive contemplated in paragraph 6 of the resolution at Annexure "A" to the petition, it was submitted that since the petitioners' industry was in grade "C", 50 per cent of the fixed assets or Rs. 80 lakhs whichever was less, was the incentive by way of sales-tax exemption, which was required to be granted. There is no reliable material to indicate that the petitioner had disclosed the worth of its fixed assets at more than Rs. 4 crores. In fact, as stated in the affidavit-in-reply filed by the Joint Commissioner while issuing the eligibility certificate, capital investment made by the unit on the date of commencement of the unit was required to be considered and eligibility certificate was to be allotted even if the project was not completed. It is stated in paragraph 4 of the affidavit-in-reply that in the case of the petitioner, the certificate was issued on the basis of the investment made in the fixed assets on the date of the unit going into commercial production. This eligibility certificate could have been revised as and when the project completion certificate was submitted to

the competent authority and a revised certificate could have been issued. It appears that the petitioner, instead of making such a move for revising the eligibility certificate on the basis of the project completion, rushed to this Court. There was no approach made by the petitioner on the basis of any enhanced value of fixed assets. As contemplated in paragraph 5 of the eligibility certificate, it was made effective from the date of commissioning the new industry or extended industry from 17.10.1981 and it was made subject to various conditions that may be incorporated in the certificate to be issued thereafter, by the Sales-tax Commissioner. As the certificate records that it was issued on the basis of the total investment on the date of commissioning of the unit, there is no reason to infer that the figures mentioned therein were arbitrarily stated by the Department. The investment of the unit at the time of completion might vary from the investment at the time of commissioning of the unit. There is no indication as to the figures which were supplied by the petitioner for the purpose of getting eligibility certificate. It may be noted that the petitioner did not raise any objection before the concerned authority after issuance of the eligibility certificate in May, 1982, describing the amount of investment against the fixed assets as mentioned in paragraph 3 of the eligibility certificate. If there was any error in mentioning the amount of investment and the amount was not stated on some rational basis, the petitioner would obviously have raised an objection. We have no reason to infer that the amount of investment has been deliberately under-stated by the concerned authority. In this view of the matter, we find no warrant for issuing any direction or granting relief in favour of the petitioner as prayed for in this petition. The petition is therefore, rejected. Rule is discharged with no order as to costs.

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